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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

* Translation supplied by the submitting organization.

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1. The Andean Commission of Jurists, in compliance with its institutional objectives, decidedly promotes and supports those institutions that through their acts in the society help to keep in force the Rule of Law and to make citizens be aware of the exercise of human rights.

2. Consequently, the Andean Commission of Jurists underlines the work of the Ombudsman (Defensor del Pueblo) and the Constitutional Courts, agencies that in the last years have been assuming an increasingly important role in the national life of the Andean countries, being remarkable the institutional achievements made despite the difficulties and situations such as those affecting the Peruvian Constitutional Court.

3. As for those institutions conceived for the defence of the Constitution (on which they are the ultimate interpreters) and the human rights (since they are the last instance in relation to proceedings regarding constitutional guarantees), the trend in the Andean region is to assign this task to specialised Constitutional Courts. This has happened in Chile, Colombia, Ecuador, Peru, and more recently in Bolivia. In Venezuela, this function is performed by the Supreme Court.

4. In Bolivia, although this institution is to begin operating in August 1999, according to the constitutional development law that states its functions, the magistrates appointed by the Congress must organise themselves to begin their functions, and for this it is necessary to have the appropriate financial support and the respect to their function by the public institutions.

5. In the case of Chile, its Court does not necessarily have the function of protecting human rights since its competence is limited basically to prevention and consultation aspects. Consequently, it is justified to assess the necessity to give such Court the power to make judgements in relation to the protection of human rights.

6. The institution that has shown the highest development and strength in this area is the Constitutional Court of Colombia, both in the development of jurisprudence and in its acceptance by the juridical community and the citizens. Its resolutions have not been limited, in general terms, to the democracy and human rights issues only but they have also given a juridical answer to the political problems that the Colombian society had to face. Its statements on the contents of the human rights, their scope and limits, as well as the continuous application of the International Law on Human Rights turn the jurisprudence of this institution into an indispensable point of reference for the work developed by similar institutions in the region.

7. The Constitutional Court of Ecuador has submitted proposals for legislative amendments that would allow it to improve the performance of its activities in order to get consolidated as the supreme instance to guarantee the maintenance of the Rule of Law and of the human rights in this country. Nevertheless, these proposals have not been accepted yet by the Legislative.

8. In the case of Peru, the Constitutional Court is still incomplete and does not have the number of members required to issue resolutions on the constitutionality of the laws. In this regard, the Inter-American Human

Rights Commission has urged the Peruvian State to immediately reinstate the three magistrates that were removed in 1997 after they issued a resolution about the impossibility of new re-election of President Alberto Fujimori.

9. As it can be seen, the work of this instance of supreme interpretation of the Constitution in the Andean region has different levels of development and requires support in order to fulfil its corresponding role. A greater political will is needed to give it legal tools that may consolidate its independence and facilitate a fluid communication with the people. On the other hand, means should be found in order to prevent the interference or influence from other power spheres trying to impede it to become a guarantor of the legality and human rights.

10. It can be said that 1998 was a year of strengthening of the institution of the Ombudsman (Defensor del Pueblo).

11. In Bolivia, the Ombudsman's Office began operating last October. The expectations of the people in relation to this institution have been high. Consequently, from the very beginning, it has received a huge number of requests regarding different matters. The most outstanding are those related to the situation of the coca growers and the denounces of abuses carried out by the police force against the civil population during public manifestations.

12. On the other hand, Ecuador also took an important step with the appointment of the new Ombudsman last September. It is also noteworthy that the Ecuadorean Constitution approved in 1998 gives a new power to the Ombudsman, i.e. "the supervision of the quality of the public services", a task that is very important in the region since all our countries have undergone in the last years processes of privatization of public services, such as electric power, drinking water, telecommunications, etc.

13. Simultaneously, in Colombia and Peru an institutional consolidation of the People Defender is being perceived. This is clear from the great number of problems considered in the claims that are submitted to these institutions, as well as the direct and permanent presence of citizens in the People Defender's Office. This shows the degree of acceptance and legitimacy of the work developed by these institutions for the non-jurisdictional protection of human rights.

14. In the case of Colombia, due to the situation of violence that is lived in this country, the presence of the Ombudsman has a great importance. Delegations from his Office have been present in the armed conflict zones in order to verify the presidential order of suspending military actions. Similarly it is not uncommon for the Ombudsman's Office to assume the representation of persons who claim justice before the judicial authorities due to the violation of their rights or those of their relatives in the context of the armed conflict. Consequently, the staff of the Ombudsman, as well as most of the defenders of human rights in Colombia, suffer continuous threats against their human rights.

15. On the other hand, in Peru, the Ombudsman's Office has also had to deal with the issue of political violence, but specially in the scope of its consequences and the social costs of the pacification process. The efforts

aimed at solving the problem of the victims of political violence can be considered as the institutional work that has deserved a special recognition from the people. The Ombudsman's Office takes part in an "Ad Hoc Commission" that recommends the granting of amnesty for those who have been unjustly condemned for the crimes of terrorism and treason to the motherland.

16. In the case of human rights of women, an important activity has also been performed in relation to claims from women who had undergone surgical contraception procedures without having adequate information about the consequences of the use of this technique as a family planning method. The recommendations of not favouring one of the family planning methods, the obligation of the State to give full and adequate information and not to set forced sterilization goals to the different health agencies were assumed by the responsible governmental authority and resulted in a decisive change in the national population policies in Peru.

17. Only two countries in the region do not have an Ombudsman's Office at national level: Chile and Venezuela. Nevertheless, in both countries this issue was specially relevant during 1998, so it is expected that in the next months both countries will incorporate this institution in their corresponding laws.

18. Precisely, in order to increase the co-operation among these institutions, to support the establishment of the Ombudsman's Office in those countries of the Andean region that do not have this institution yet, and to strengthen the human rights culture in the Andean countries, the Andean Council of Ombudsmen was established in September upon the initiative of the Andean Commission of Jurists. The Andean Council of Ombudsmen began its activities with the support to the diffusion of the Ombudsman's Office work in Bolivia and currently it is co-ordinating the technical assistance to the institution in Ecuador.

19. The Andean Commission of Jurists has been appointed to the Technical Secretariat of the Council, a position from which the Andean Commission of Jurists reiterates its commitment to the Ombudsmen of the region, since they are an indispensable element for the consolidation of the democratic institutions and for the defence of human rights.